

FREDERICK L. SMITH

IBLA 75-435

Decided August 11, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying appellant's request for reconsideration of its prior decision rejecting noncompetitive oil and gas lease offer for acquired lands ES 8832.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Consent of Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

APPEARANCES: Frederick L. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Frederick L. Smith filed a noncompetitive oil and gas lease offer (ES 8832) in the Eastern States Office, Bureau of Land Management (BLM), pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970). The lease offer described certain federal acquired lands in the State of Florida which are within the Okeechobee Waterway Project and, more specifically, the W. P. Franklin Lock and Dam Reservation within said project. The lands are under the administrative jurisdiction of the Jacksonville District, Corps of Engineers, Department of the Army.

The lease offer was submitted by the BLM to the Corps of Engineers for its consideration. The Corps of Engineers refused to consent to the issuance of a lease for the lands and gave the following explanation:

* * * [T]he Corps of Engineers regulations specify that no civil works land will be made available for oil and gas leases if such lands are within 2,000 feet of a major structure. In view of the fact that any exploration conducted on the Government-owned land would be in violation of the aforementioned 2,000-foot criteria, we regret to advise that the property is not available for leasing * * *.

On the basis of this report withholding consent to leasing, the BLM rejected the appellant's offer by decision dated November 6, 1974. Subsequently, appellant filed a request for reconsideration with the BLM on December 11, 1974, expressing a willingness to consent to a stipulation precluding surface entry on the land and any directional drilling to cross under the land within 2,000 feet of the surface if a lease issued. Included with the request was a suggested stipulation submitted by the appellant.

The appellant's request for reconsideration, together with his reasons therefore and his suggested stipulation, were transmitted to the Corps of Engineers for consideration. In response, the Corps of Engineers reaffirmed its refusal to consent to issuance of an oil and gas lease. Accordingly, appellant's request for reconsideration was denied by the BLM in a decision dated March 13, 1975, which decision is the subject of this appeal.

As grounds for his appeal, appellant alleges that he has been issued other oil and gas leases for land administered by the Corps of Engineers which merely contained a stipulation to the effect that no operations will be allowed within 2,000 feet of structures. He contends that the position of the Corps of Engineers in the present case not to consent to leasing at all if such lands are within 2,000 feet of a structure is not consistent with its other authorizations. Appellant further contends that the Corps of Engineers is misinterpreting its own regulation and that the Corps' requirements would actually be met by the "no entry" stipulation which appellant has said he would accept.

[1] The basic issue raised by this appeal is whether the Department of the Interior has the discretion to issue an oil and gas lease for federal acquired lands pursuant to the Mineral Leasing Act for Acquired Lands of 1947, as amended, supra, where the consent of the administrative agency having jurisdiction over the land is withheld. The answer can be found in the terms of the statute itself.

Section 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1970), provides in part:

* * * No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *.

The same requirement of consent is stated in the regulations at 43 CFR 3109.3-1 (1974).

This Department has held that the effect of this statute is to preclude mineral leasing on acquired lands, as opposed to public domain, without the consent of the administrative agency having jurisdiction over the acquired land and to cause any lease which does issue to be subject to any stipulations which said agency may impose. Thomas B. Cole, A-30444 (December 6, 1965); see Mobil Oil Corp., 10 IBLA 7 (1973); Susan D. Snyder, 9 IBLA 91 (1973). The Department has no discretionary authority to waive either the consent requirement or the execution of the stipulations required by the administrative agency. Thomas B. Cole, supra; Susan D. Snyder, supra.

Because the Corps of Engineers has refused to consent to the leasing of these acquired lands, we must uphold the rejection of appellant's application. Appellant is free to pursue the matter of consent directly with the Corps of Engineers, but this offer will not be suspended to await any possible change in that agency's position against leasing these lands. Thomas B. Cole, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

